

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Texas (Dallas Division)

Shalong Maa, Ph.D.

P.O. Box 117015, Carrollton, TX 75011 (1100 Cadiz St., Dallas, TX 75221)
(PLAINTIFF)

V.

(i) Ethel Rollins-Cross (Group Director); (ii) Harrison, Jessica (Pat. Examiner); (iii) Wallace, Valencia Martin (Pat. Examiner); (iv) Vo, Peter Dung (Pat. Examiner); (v) Paradiso, John Roger (Pat. Examiner);

Technology Center 3700 / Exam. Groups 3710-3720, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450
(DEFENDANTS 1-5)

And

(vi) Row, Patrick (Director); (vii) Fenwick, Robert (Supervisor); (viii) Gray, Fontella A.; (ix) Murray, Gloria A.; (x) Farmer, Niomi P.

Office of Document Services / Public Record, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450
(DEFENDANTS 6-10)

CASE NUMBER: 3:03-CV-2721 K

Filed: Nov. 10, 2003

PLAINTIFF'S AMENDED COMPLAINT
(Fed. R. Civ. P. 15(a))

Plaintiff alleges:

I. JURISDICTION AND VENUE

1. This is an action brought by the Plaintiff for declaratory judgment, treble damages, and injunction relief, to redress the past discrimination and deprivation and to prevent future discrimination and deprivation, by the defendants acting under the color of law, statute, ordinance, regulation, custom or usage, of and to vindicate and safeguard rights and privileges secured to the Plaintiff by the United States Constitution and Statutes providing for equal rights of citizens or all persons within the jurisdiction of the United States.

2. The claims asserted in this action arise under: (i) Title 42 U.S.C. § 1981, (ii) Title 42 U.S.C. § 1985(3), and (iii) Freedom of Information Act (FOIA), Title 5 U.S.C. § 552.

3. Subject matter jurisdiction of the claims asserted in this action is conferred on the district court pursuant to Title 28 U.S.C. § 1331, and Title 28 U.S.C. § 1343(a)(1), (2) and (4).

4. Jurisdiction of this court is also invoked pursuant to FOIA, Title 5 U.S.C. § 552(a) and Title 28 U.S.C. § 1361.

5. Venue properly lies in this district and division pursuant to 28 U.S.C. § 1391(e)(3) and Title 5 U.S.C. § 552(a)(4)(B).

II. STATEMENTS OF FACTS

6. Plaintiff Shalong Maa, Ph.D. is an inventor and has filed several U.S. patent applications with the United States Patent and Trademark Office (hereinafter the "USPTO"), including the U.S. Patent application No. 08/833,342 filed on 04/04/1997 (hereinafter the "342 Application"), on which a patent has been issued as U.S. Patent No. 6,572,431 on 06/03/2003 (hereinafter the "431 Patent") more than six years after said application date. From the application date to December 2000, the 342 Application was pending before the Examination Group / Technology Center 3700 of the USPTO. Thereafter, the jurisdiction over the 342 Application passed to the Board of Patent Appeals and Interferences (or "BPAI") of the USPTO during the course of an appeal proceedings initiated by Plaintiff, pursuant to 37 C.F.R. § 1.191-1.192, after all the Plaintiff's patent claims in the 342 Application were finally rejected by the Examiners. The BPAI, in its decision, reversed all of the Exam. Group / Tech. Center 3700's decisions of rejecting patent claims in the 342 Application, which resulted in the issuance of the 431 Patent on the application.

7. The subject matter of the present Action pertains to prosecution of the 342 Application while the application was pending before the Exam. Group / Tech. Center 3700 of the USPTO, and to the Plaintiff's requests for certified copies of selected paper in the application file of the 342 Application from the Office of Document Services (Public Record) of the USPTO. The application proceedings of the 342 Application were prosecuted by the Plaintiff *pro se* before the USPTO after May 1999.

III. PARTIES DEFENDANT

8. The defendant Ethel Rollins-Cross is and has been, or was at all material times a duly appointed Group Director of the Exam. Group / Tech. Center 3700 (hereinafter, the "Defendant Group Director") of the USPTO, and she is sued in her official capacity and only as an individual inasmuch as she shall be held personally liable for her ultra vires acts complained of herein. The Exam. Group / Tech. Center 3700 is a subdivision of the USPTO, and is responsible for examination of patent applications relating to such general technical fields as Mechanical Engineering, Manufacturing, and Products and Designs. The USPTO is a governmental body duly constituted pursuant to Title 35 U.S.C. § 1.

9. The defendants Jessica Harrison, Valencia Martin Wallace, Peter Dung Vo, and John Roger Paradiso (hereinafter the "Defendant Examiners") are and have been, or were at all material times patent examiners of said Exam. Group / Tech. Center 3700, and were directly involved in illegally

rejecting patent claims in said 342 Application, and they are sued in their official capacities and only as individuals, respectively, inasmuch as they shall be held personally liable for their respective ultra vires acts complained of herein.

10. The defendants Patrick Row and Robert Fenwick are and have been, or were at all material times duly appointed Director and Supervisor, respectively, of the Office of Document Services / Public Record (hereinafter, the “Defendant Pub. Record Director”, and the “Defendant Pub. Record Supervisor”, respectively) of the USPTO, and they are sued in their respective official capacities because of their involvement in denying Plaintiff's requests for certified copies of selected papers in the application file of the 342 Application. The Office of Doc. Services / Pub. Record is a subdivision of the USPTO, and is responsible for providing document services to the customers of the USPTO.

11. The defendants Fontella A. Gray, Gloria A. Murray, and Niomi P. Farmer are and have been or were at all material times employees of said Office of Doc. Services / Pub. Record (hereinafter, the “Defendant Pub. Record Employee”), and they are sued in their respective official capacities because of their involvement in denying Plaintiff's requests for certified copies of selected papers in the application file of the 342 Application.

IV. FIRST CLAIM FOR RELIEF

12. During the prosecution of the 342 Application before the Exam. Group / Tech. Center 3700, the Plaintiff received an official “Office Action” dated 11/10/1998, in which all the patent claims in the 342 Application were illegally rejected by the Defendant Examiners Jessica Harrison and John Roger Paradiso. Thereafter, in response to the Plaintiff's official Response and Amendment filed with the USPTO pursuant the procedures set forth in 37 C.F.R., the Plaintiff received two more official “Office Action” dated 08/02/1999 and 05/15/2000 respectively, in which all the patent claims in the 342 Application were illegally rejected by the Defendant Examiners Valencia Martin Wallace and John Roger Paradiso. With respect to the aforementioned appeal proceeding under 37 C.F.R. § 1.191-1.192, the Plaintiff's “Notice of Appeal” and “Appeal Brief” were filed on 06/06/2000 in response to the final rejection of all the claims in the “Office Action” dated 05/15/2000. Thereafter, the Plaintiff filed the Appeal Brief again on 08/29/2000 in response to the Examiners' Notification of Non-Compliance in which the Defendant Examiners Valencia Martin Wallace and John Roger Paradiso stated that the Plaintiff's 06/06/2000 Appeal Brief fails to comply with the requirement of 37 C.F.R. § 1.192(c)(9) in regarding including a copy of the appealed claim in the Appendix portion of the Appeal Brief. An official “Examiner's Answer” was filed on 12/28/2000 by the Defendant Examiners Jessica Harrison, Peter Dung Vo and John Roger Paradiso in answer and response to said Plaintiff's Appeal Brief.

[Note: (A) The certified copies of said “Appeal Brief” dated 06/06/2000, the “Office Action” dated 05/15/2000, and the “Examiner's Answer” dated 12/28/2000 are attached to the Plaintiff's original Complaint filed 11/10/2003 as EXHIBIT-I, EXHIBIT-II, and EXHIBIT-III respectively, and are thus on file in the clerk's office; (B) The “Appeal Brief” dated 08/29/2000 is essentially identical to the Appeal Brief dated 06/06/2000 except,

(i) the top three lines on Page 2 therein relating to the statement of "status of amendments", and (ii) the Appendix portion, which is not included in said EXHIBIT-I; All other portions of the two versions of said Appeal Brief, including paragraph and page numbers, are identical.]

13. Plaintiff alleges that, (i) the Defendant Examiners' acts, conducts and practices in examination of the Plaintiff's 342 Application and in their decisions of rejecting the Plaintiff's patent claims in the foregoing official Office Actions and Examiner's Answer are arbitrary, capricious, abuses of discretion, and in bad faith without observance of law or procedures required by law, and that (ii) the Defendant Examiners' such acts and conducts constitute purposeful discrimination against the Plaintiff on the basis of the fact that the Plaintiff is an independent and minority inventor and was acting *pro se* in prosecution of a patent application that discloses an important invention that has considerable market value. The Defendant Examiners have exhibited malice, willful misconduct and reckless disregard for and callous indifference to the Plaintiff's federally protected rights. The defendant Examiners' these acts are explicitly shown and displayed in (but not limited to) the aforementioned official "Examiner's Answer" dated 12/28/2000 and official "Office Action" dated 05/15/2000, as are exemplified in details in the ensuing paragraphs.

14. During the prosecution of the 342 Application, the Plaintiffs had, in his official Responses filed with the USPTO, provided the Defendant Examiners with numerous citations and discussions of legal authorities, such as statutory requirement and legal precedents, in support of the Plaintiff's discussions of all aspects of patentability of the claimed invention in the 342 Application. However, in the foregoing official Office Actions and in the official Examiner's Answer dated 12/28/2000, the Defendant Examiners *refused* to conform to *any* of these legal authorities in rendering their decisions of rejecting patent claims; and in some cases, the Defendant Examiners simply refused to provide any type of response or discussion that is pertinent in any way to some of the Plaintiff's citations and discussions of legal authorities and statutory requirement *at all*. Furthermore, the Defendant Examiners had even cited two court decisions (which are the only two court decisions referred to in any of their official actions) against rather than in support of their rejection of claims.

15. The Plaintiffs, in his official Responses filed with the USPTO, (i) had repeatedly and vehemently requested that the defendant Examiners apply legal authorities such as prior case law or legal precedent in allowing and rejecting claims, (ii) had repeatedly requested that the defendant Examiners provide discussion as to why Plaintiff's citations of or reference to legal authorities, such as legal precedent or prior case law and rationale used by the court, do not provide sufficient support to the Plaintiff's traverse of the examiner's rejection of claim, and (iii) had advised the Defendant Examiners in the aforementioned Appeal Brief that the only two court decisions referred to in any of the Defendant Examiners' official Actions are not in support of their rejection of claims. The Defendant Examiners were apparently aware of the Plaintiff's these repeated requests and advise. However, in response thereto, the Defendant Examiners Jessica Harrison, Peter Dung Vo and John Roger Paradiso stated in part in their official "Examiner's Answer" filed 12/28/2000 that, "Appellant is

apparently requesting a discussion of the legal precedents regarding the case. However, the Examiner has made the rejections based on the claims and the prior art, relying on the claimed structure and function of the invention, not on legal arguments ..." [emphasis added]. The defendant Examiners' such a statement is a clear exhibition of their arrogance before the law in indicating that they are above the law, and is clearly unlawful.

16. The Plaintiff had made repeated attempts to call the Defendant Examiners' attention to some of the fundamental differences between the claimed invention in the 342 Application and a prior art reference cited by them, however the Defendant Examiners refused to discuss or take into consideration these fundamental differences, and insisted on rejecting all the claims in the 342 Application regardless of the differences between the prior art and the claimed invention in the 342 Application. Moreover, the Defendant Examiners did not even have correct understanding of the relevant technical components of the prior art references cited by them, and had so admitted, but they refused to change their mind with respect to illegally rejecting claims in the 342 Application

17. The Defendant Examiners were utterly dishonest and were playing language game in rendering some of their opinions or decisions in their official Examiner's Answer dated 12/28/2000 and in their official Office Action dated 05/15/2000, and they had used precisely the same arguments in support of their rejections of different patent claims under different statutory bases. The Defendant Examiners were also utterly dishonest in construing prior art references cited by them and had even fabricated technical elements for misuse as prior art elements in order to reject claims in the 342 Application

18. The Defendant Examiners' acts and conducts complained of in this Complaint were performed willfully, unlawfully, maliciously, and in wanton disregard of Plaintiff's rights. These acts and conducts constitute purposeful discrimination against the Plaintiff on the basis of the fact that the Plaintiff is an independent and minority inventor and was acting *pro se* in prosecution of a patent application that discloses an important invention that has considerable market value; The purpose of these acts and conducts is to deprive and withhold from Plaintiff right to the full and equal benefit of the intellectual property laws. Thus the Defendant Examiners' such acts and practices are abuse of discretion and not in conformance with 42 U.S.C. § 1981 and are unconstitutional.

19. The Defendant Examiners' acts and conducts complained of in this Complaint caused the 342 Application being pending before the USPTO three-four more years than necessary, which has adversely affected the Plaintiff's efforts in seeking venture capital investment to establish business ventures relating to the inventions disclosed in the 342 Application, and to timely compete with established business corporations in the field. Furthermore, the Plaintiff had to spend substantial amount of his professional times and efforts in trying to get into the field of intellectual property law so as to prosecute the 342 Application *pro se*.

20. Having established the cause of action under 42 U.S.C. § 1981, the Plaintiff is entitled to legal and equitable relief, including an injunction and recovery of compensatory and punitive damages against the Defendant Examiners, as are more fully set forth in the last Section of this Complaint.

V. SECOND CLAIM FOR RELIEF

21. Plaintiff repeats, re-alleges, and incorporates each and every allegation and averment set forth in Paragraphs 1 through 18 of this Complaint.

22. Plaintiff alleges that, the acts and conducts of the Defendant Examiners described above were in collusion and in concert with one another. These defendants conspired among themselves and with each other to deprive and withhold from Plaintiff right to the full and equal benefit of intellectual property laws that is secured by title 42 U.S.C. § 1981, and that, there is invidiously discriminatory animus behind these conspirators' actions, as described in paragraphs 12-18 above. The Defendant Examiners' such acts of discrimination and conspiracy are irrational and unnecessarily burdens the Plaintiff's exercise of fundamental rights.

23. (a) The official Office Action dated 11/10/1998 is signed by the Defendant Examiners Jessica Harrison and John Roger Paradiso, which demonstrates that an agreement was made between these two defendants in rendering the Office Action, and thus it is an act of conspiracy and an act in furtherance of the object of the conspiracy to deprive the foregoing Plaintiff's rights secured by 42 U.S.C. § 1981; (b) The official Office Actions dated 08/02/1999 and 05/15/2000 are signed by the Defendant Examiners Valência Martin Wallace and John Roger Paradiso, which demonstrate that, agreements were made between these two defendants in rendering these two Office Actions, and thus they are acts of conspiracy and acts in furtherance of the object of the conspiracy to deprive the foregoing Plaintiff's rights secured by 42 U.S.C. § 1981; and (c) The official Examiner's Answer filed 12/28/2000 was signed by the Defendant Examiners Jessica Harrison, Peter Dung Vo and John Roger Paradiso, which demonstrates that an agreement were made between these three defendants in rendering said Examiner's Answer, and thus it is an act of conspiracy and an act in furtherance of the object of the conspiracy to deprive the foregoing Plaintiff's rights secured by 42 U.S.C. § 1981.

24. The Plaintiff repeats, re-alleges, and incorporates each and every allegation and averment set forth in Paragraph 19 of this Complaint.

25. Therefore, the Plaintiff is entitled to recovery of damages against the Defendant Examiners pursuant to 42 U.S.C. § 1985(3), as are more fully set forth in the last Section of this Complaint.

VI. THIRD CLAIM FOR RELIEF

26. Plaintiff repeats, re-alleges, and incorporates each and every allegation and averment set forth in Paragraphs 21 through 23 of this Complaint.

27. The Defendant Examiners' acts and conducts set out hereinabove were done with the knowledge, permission, consent, and participation of the Defendant Group Director Ethel Rollins-Cross. Before the commencement of the aforementioned appeal proceeding, the Plaintiff had filed two petitions, pursuant to the procedures set forth in 37 C.F.R., to the Defendant Group Director in view of the irregularities in the foregoing official Office Actions dated 08/02/1999 and 05/15/2000 respectively. The Plaintiff's petitions were all denied or dismissed by the Defendant Group Director, which constitutes the Defendant Group Director's agreement with the Defendant Examiners' actions described above, and thus, it is an act of conspiracy and an act in furtherance of the object of the conspiracy to deprive the foregoing Plaintiff's rights secured by 42 U.S.C. § 1981.

28. The Plaintiff repeats, re-alleges, and incorporates each and every allegation and averment set forth in Paragraph 19 of this Complaint.

29. Therefore, the Plaintiff is entitled to recovery of damages against the Defendant Group Director pursuant to 42 U.S.C. § 1985(3), as are more fully set forth in the last Section of this Complaint.

VII. FORTH CLAIM FOR RELIEF

30. Plaintiff repeats, re-alleges, and incorporates each and every allegation and averment set forth in Paragraphs 1 through 29 of this Complaint.

31. Because of the Defendant Examiners' acts and conducts described above, the Plaintiff determined that it was necessary to obtain certified copies of some file-wrapper records of the 342 Application. The USPTO's legal obligation to provide such files and records to the applicant of a patent application is set out in 37 C.F.R. and in the FOIA, title 5 U.S.C. § 552(a)(3).

32. From December 2000 to July 2003, Plaintiff had submitted written communication more than six (6) times to, and had attempted many more telephone contacts with the Defendants Pub. Record Employee and Supervisor in attempting to obtain certified copies of selected papers in the application file of the 342 Application. Plaintiff had also submitted payment therefore four (4) times (the payment were eventually accepted by the Office). However, the Plaintiff was not able to obtain most of the certified copies so requested (except the certified copies of the originally filed provisional and regulation patent applications) for a period of more than three (3) years as a result of these defendants' bad faith in responding to the Plaintiff's such requests for certified copies.

33. In July 2003, Plaintiff did finally receive most but still not all of the requested certified copies from said Office of Doc. Services / Pub. Record as a result of the Plaintiff's repeated submission of written inquires to the Defendant Pub. Record Director – the Plaintiff still has not yet received the requested certified copy of the "Appeal Brief" dated 08/29/2000 in the application file of the 342 Application.

34. The defendants Robert Fenwick, Fontella A. Gray, Gloria A. Murray, Niomi P. Farmer and Patrick Row's acts and conducts described above were not in conformance with FOIA, Title 5 U.S.C. § 552(a)(3).

VIII. JURY DEMAND AND

35. Plaintiff demands a trial by jury on any and all issues triable by jury.

IX. NEED FOR EQUITABLE RELIEF

36. Plaintiff has no adequate remedy at law.

37. No prior application for injunctive relief has been made to other court in connection with this action.

X. PRAYER

Plaintiff requests that:

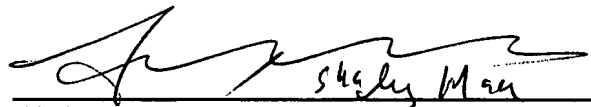
1. The court assumes jurisdiction over this action;
2. The court adjudges, declares, and decrees that, (a) The discriminatory acts and practices of the Defendants Examiners and Group Director complained of in this Complaint are unlawful and unconstitutional; (b) The Defendants Examiners and Group Director have combined and conspired to deprive the Plaintiff's federally protected rights; and (c) The acts and conducts of the Defendants Pub. Record Director, Supervisor, and Employee complained of herein are in violation of the FOIA, title 5 U.S.C. § 552;
3. The court grants a preliminary and permanent injunction, enjoining the Defendant Examiners and Group Director and all subordinates agency officers, agents, employees, servants, confederates, and successors and all persons in active concert or participation with them or with any of them, (a) from failing or refusing to apply legal precedent, or applying incorrect case law or applying legal authorities in bad faith in examination of the Plaintiff's and other independent inventors' patent application in the future, and (b) from failing or refusing to provide suitable response to the Plaintiff's citation and discussion of legal precedent or other legal authority in rejecting claims in examination of the Plaintiff's patent applications in the future;
4. The court grants a preliminary and permanent injunction, enjoining the Defendants Pub. Record Director, Supervisor, and Employee and all subordinates agency officers, agents, employees, servants, confederates, and successors and all persons in active concert or participation with them or with any of them from failing or refusing to comply with the title 5 U.S.C. § 552 and the procedures set forth in 37 C.F.R. in providing document services to the Plaintiff and other independent or minority inventors in the future;

5. The court enters judgment in favor of the Plaintiff and against the Defendant Examiners and the Defendant Group Director:
 - (a) For compensatory damages in the sum of \$500,000,000 (or \$500 Millions), or to be determined by the trier of fact; and
 - (b) For exemplary and punitive damages in the sum of \$1,000,000,000 (or \$ 1 Billions), or to be determined by the trier of fact and as sufficient to deter similar conducts in the future by these defendants;
6. The court enters judgment in favor of the Plaintiff and against all the defendants for all costs of this action;
7. The court grants the Plaintiff all other relief that may be just and equitable or to which the Plaintiff may be entitled.

SIGNED ON:

03/15/2004

BY:



Shalong Maa, Ph.D., *Pro Se* Plaintiff
P.O. Box 117015
Carrollton, TX 75011